

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DANNY LAMONT BLACKSHER,

Petitioner,

v.

Case Nos. 08-20132, 11-11826
Honorable Thomas L. Ludington

UNITED STATES OF AMERICA,

Respondent.

/

ORDER ADOPTING REPORT AND RECOMMENDATION,
DENYING PETITIONER'S MOTION TO VACATE, SET ASIDE, OR CORRECT
SENTENCE PURSUANT TO 28 U.S.C. § 2255, AND GRANTING RESPONDENT'S
MOTION TO PETITIONER'S DISMISS MOTION TO VACATE SENTENCE

This matter is before the Court on the report and recommendation (ECF No. 70) issued by Magistrate Judge Charles E. Binder on October 13, 2011, on Petitioner's motion to vacate the sentence (ECF No. 56) and Respondent's motion to dismiss the motion to vacate the sentence (ECF No. 69). Judge Binder recommends that the Court deny Petitioner's motion, grant Respondent's motion, and dismiss the petition brought pursuant to 28 U.S.C. § 2255. In his § 2255 petition, Petitioner raises three issues: (1) ineffective assistance of counsel based on counsel's failure to perfect an appeal after having been instructed to do so; (2) abuse of discretion by the district court for failure to consider Petitioner's pro se motion for downward departure; and (3) application of the Fair Sentencing Act of 2010 to result in a reduction in Petitioner's sentence.

As of today's date, no party has filed any objections to Judge Binder's report and recommendation. The failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th

Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

Accordingly, it is **ORDERED** that Judge Binder's report and recommendation (ECF No. 70) is **ADOPTED**.

It is further **ORDERED** that Petitioner's motion to vacate the sentence (ECF No. 56) is **DENIED**.

It is further **ORDERED** that Respondent's motion to dismiss the motion to vacate the sentence (ECF No. 69) is **GRANTED**.

Dated: November 18, 2011

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and upon Danny Lamont Blacksher, #42317039 at Herlong Federal Correctional Institution, Inmate Mail/Parcels, P.O. Box 800, Herlong, CA 96113 by first class U.S. mail on November 18, 2011.

s/Tracy A. Jacobs
TRACY A. JACOBS